

ASSEMBLY, No. 2165

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

Sponsored by:

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Provides municipality with affordable housing credit toward its municipal fair share housing obligation for funds transferred to the New Jersey Affordable Housing Trust Fund pursuant to P.L.2008, c.46.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning municipal affordable housing credit and
2 amending P.L.2008, c.46.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
8 read as follows:

9 8. a. The council may authorize a municipality that has
10 petitioned for substantive certification, or that has been so
11 authorized by a court of competent jurisdiction, and which has
12 adopted a municipal development fee ordinance to impose and
13 collect development fees from developers of residential property, in
14 accordance with rules promulgated by the council. Each amount
15 collected shall be deposited and shall be accounted for separately,
16 by payer and date of deposit.

17 A municipality may not spend or commit to spend any affordable
18 housing development fees, including Statewide non-residential fees
19 collected and deposited into the municipal affordable housing trust
20 fund, without first obtaining the council's approval of the
21 expenditure. The council shall promulgate regulations regarding
22 the establishment, administration and enforcement of the
23 expenditure of affordable housing development fees by
24 municipalities. The council shall have exclusive jurisdiction
25 regarding the enforcement of these regulations, provided that any
26 municipality which is not in compliance with the regulations
27 adopted by the council may be subject to forfeiture of any or all
28 funds remaining within its municipal trust fund. Any funds so
29 forfeited shall be deposited into the "New Jersey Affordable
30 Housing Trust Fund" established pursuant to section 20 of
31 P.L.1985, c.222 (C.52:27D-320).

32 b. A municipality shall deposit all fees collected, whether or
33 not such collections were derived from fees imposed upon non-
34 residential or residential construction into a trust fund dedicated to
35 those purposes as required under this section, and such additional
36 purposes as may be approved by the council.

37 c. (1) A municipality may only spend development fees for an
38 activity approved by the council to address the municipal fair share
39 obligation.

40 (2) Municipal development trust funds shall not be expended to
41 reimburse municipalities for activities which occurred prior to the
42 authorization of a municipality to collect development fees.

43 (3) A municipality shall set aside a portion of its development
44 fee trust fund for the purpose of providing affordability assistance
45 to low and moderate income households in affordable units

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 included in a municipal fair share plan, in accordance with rules of
2 the council.

3 (a) Affordability assistance programs may include down
4 payment assistance, security deposit assistance, low interest loans,
5 common maintenance expenses for units located in condominiums,
6 rental assistance, and any other program authorized by the council.

7 (b) Affordability assistance to households earning 30 percent or
8 less of median income may include buying down the cost of low
9 income units in a municipal fair share plan to make them affordable
10 to households earning 30 percent or less of median income. The use
11 of development fees in this manner shall not entitle a municipality
12 to bonus credits except as may be provided by the rules of the
13 council.

14 (4) A municipality may contract with a private or public entity
15 to administer any part of its housing element and fair share plan,
16 including the requirement for affordability assistance, or any
17 program or activity for which the municipality expends
18 development fee proceeds, in accordance with rules of the council.

19 (5) Not more than 20 percent of the revenues collected from
20 development fees shall be expended on administration, in
21 accordance with rules of the council.

22 d. The council shall establish a time by which all development
23 fees collected within a calendar year shall be expended; provided,
24 however, that all fees shall be committed for expenditure within
25 four years from the date of collection. A municipality that fails to
26 commit to expend the balance required in the development fee trust
27 fund by the time set forth in this section shall be required by the
28 council to transfer the remaining unspent balance at the end of the
29 four-year period to the "New Jersey Affordable Housing Trust
30 Fund," established pursuant to section 20 of P.L.1985, c.222
31 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et
32 al.), to be used in the housing region of the transferring
33 municipality for the authorized purposes of that fund.

34 (1) A municipality that transfers its development fee trust fund
35 balance to the "New Jersey Affordable Housing Trust Fund"
36 pursuant to the provisions of this section shall receive one unit of
37 affordable housing credit, as of the date of the fund balance
38 transfer, towards its municipal fair share obligation in proportion to
39 the minimum per unit amount for the housing region of the
40 transferring municipality as established by the council.

41 e. Notwithstanding any provision of this section, or regulations
42 of the council, a municipality shall not collect a development fee
43 from a developer whenever that developer is providing for the
44 construction of affordable units, either on-site or elsewhere within
45 the municipality.

46 This section shall not apply to the collection of a Statewide
47 development fee imposed upon non-residential development
48 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1

1 et seq.) by the State Treasurer, when such collection is not
2 authorized to be retained by a municipality.

3 (cf: P.L.2008, c.46, s.8)

4
5 2. Section 9 of P.L.2008, c.46 (C.52:27D-329.3) is amended to
6 read as follows:

7 9. a. The council may authorize a municipality that has
8 petitioned for substantive certification to impose and collect
9 payments-in-lieu of constructing affordable units on site upon the
10 construction of residential development, which payments may be
11 imposed and collected as provided pursuant to the rules of the
12 council. Payment-in-lieu fees shall be deposited into a trust fund,
13 and accounted for separately from any other fees collected by a
14 municipality. Whenever a payment-in-lieu is charged by a
15 municipality pursuant to this subsection, a development fee
16 authorized pursuant to section 8 of P.L.2008, c.46 (C.52:27D-
17 329.2) shall not be charged in connection with the same
18 development.

19 b. A municipality shall commit to expend collections from
20 payments-in-lieu imposed pursuant to subsection a. of this section
21 within four years of the date of collection. The council may extend
22 this deadline if the municipality submits sufficient proof of building
23 or other permits, or other efforts concerning land acquisition or
24 project development. The council shall provide such administrative
25 assistance as may be required to aid in the construction of
26 affordable housing units. A municipality that fails to commit to
27 expend the amounts collected pursuant to this section within the
28 timeframes established shall be required to transfer any unexpended
29 revenue collected pursuant to subsection a. of this section to the
30 "New Jersey Affordable Housing Trust Fund," established pursuant
31 to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used within
32 the same housing region for the authorized purposes of that fund, in
33 accordance with regulations promulgated by the council.

34 (1) A municipality that transfers its payments-in-lieu balance to
35 the "New Jersey Affordable Housing Trust Fund" pursuant to the
36 provisions of this section shall receive one unit of affordable
37 housing credit, as of the date of the fund balance transfer, towards
38 its municipal fair share obligation in proportion to the minimum per
39 unit amount for the housing region of the transferring municipality
40 as established by the council.

41 (cf: P.L.2008, c.46, s.9)

42
43 3. This act shall take effect immediately.

STATEMENT

1
2
3 This bill provides municipalities with affordable housing credit
4 toward their municipal fair share housing obligation for funds
5 transferred to the “New Jersey Affordable Housing Trust Fund”
6 pursuant to P.L.2008, c.46. Under the provisions of the bill, a
7 municipality that has transferred its development fee trust fund or
8 payments-in-lieu balances to the “New Jersey Affordable Housing
9 Trust Fund” would receive one unit of affordable housing credit in
10 proportion to the minimum per unit amount established for the
11 housing region of the transferring municipality by the Council on
12 Affordable Housing (“council”).

13 As a point of reference, under N.J.A.C.5:97-7.1 (the council’s
14 substantive rules for the period beginning June 2, 2008) the
15 minimum per unit transfer amount pursuant to a regional
16 contribution agreement by housing region was: Housing Region 1
17 (Northeast) -- \$80,000; Housing Region 2 (Northwest) -- \$67,000;
18 Housing Region 3 (West Central) -- \$67,000; Housing Region 4
19 (East Central) -- \$70,000; Housing Region 5 (Southwest) --
20 \$71,000; and Housing Region 6 (South-Southwest) -- \$80,000.